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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/908,945	07/19/2001	Akira Wakabayashi	892_019	1922

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BURR & BROWN
PO BOX 7068
SYRACUSE, NY 13261-7068

EXAMINER

BUCKLEY, DENISE J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/908,945

Applicant(s)

WAKABAYASHI, AKIRA

Examiner

Ms. Buckley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 1, 2 and 7-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 19 July 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1,2,7-9, drawn to application selling of an article, classified in class 705, subclass 26.
 - II. Claims 3-6, drawn to determining a successful bidding at an auction, classified in class 705, subclass 37.
2. Inventions II and I are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has a separate utility such as determining the highest offer received for selling an article. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Burr on 8/20/03 a provisional election was made with traverse to prosecute the invention of group II, claims 3-6. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1, 2,7-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Priority

5. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

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6. It is noted that this application appears to claim subject matter disclosed in a prior foreign application. A reference to the foreign application must be inserted as the first sentence of the specification of this application, if applicant intends to rely on the filing date of the prior patent under 35 U.S.C. 119(a-d) or (f). See 37 CFR 1.55.

Claim Rejections - 35 USC § 112

7. Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. Please review the disclosure and claims and modify as appropriate.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 3-6 are rejected under 35 U.S.C. 102(a+e) as being anticipated by Fisher et al. (6243691). Fisher et al. discloses a method and system for processing and transmitting electronic auction (online trading system) information by conducting a multi-

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person, interactive auction, in a variety of auction formats allowing a group of bidders to interactively place bids over a communications network, then closes the auction from further bidding and notifies the bidders of the outcome (see front page). Figures 4, and 6 shows a sale receiving means (52), an information inputting means (operator 300, col.8 lines 20-22), an information storing means (30), auction selecting means (claim 1 and in figure 2, sales format: Dutch auction is shown), and information showing means (25). For the bidding, see figure 10 showing the prior bid receiving means (97), bid submission receiving means (98), and successful bid determining means (95) where the final highest price received by either receiving means determines the article is sold through the bid validator (21 or 117). Further disclosed is a unit price storing means (see figure 3, bid increment), where the successful price means is equal to the unit price plus the highest price bid submission (bottom of col.8 and top of col.9, and col.12, 3rd paragraph) and if no submission is received the successful bid price becomes the unit price plus the starting price (bottom of col. 8 and top of col.9).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Alaia et al. ('167,147,'018,'146), Rackson et al., and Brown are cited to show method and systems for auctioning.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Buckley whose telephone number is 703-305-0041. The examiner can normally be reached on Tues-Thurs 10-3 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4180.



DJB, Aug. 25, 2003

Charles T. Jordan
CHARLES T. JORDAN
SUPERVISOR, ART UNIT 3641
AUGUST 25, 2003